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SUBJECT: BOSNIA: SCENESETTER FOR HIGH REP VISIT TO
WASHINGTON APRIL 19-21

Classified By: AMBASSADOR DOUGLAS MCELHANEY. REASON: 1.4 (B) AND (D).

11. (C) SUMMARY: High Representative Christian Schwarz-Schilling's April 19-21 visit to Washington will be an opportunity to review his first three months in office. CSS (his staff's abbreviation, not used in speech) sees himself as the antidote to former High Rep Ashdown's activist intervention in BiH's political development. But his hands-off approach has drawbacks, as described in some detail below. On a major U.S. priority, constitutional reform, CSS has been more engaged -- but within clearly defined limits. We will want to push him to be constructive in the end-game, and to work with us to craft "phase two." Schwarz-Schilling will look for strong U.S. support for transition from High Representative to EU Special Representative by next March. We should remind CSS that we have policy objectives in Bosnia, and that we believe that the international presence must be used to move this new state forward. That sometimes must include pressure on politicians and others alike if we are to remain on the same wavelength. END SUMMARY.

SCHWARZ-SCHILLING: THE OPPOSITE OF ASHDOWN

12. (C) With his slow manner and deliberate speech, Schwarz-Schilling is the polar opposite of the activist, energetic former High Rep Ashdown. CSS believes Bosnians need to take increased responsibility for their own political decision-making; under his leadership, OHR has adopted a distinctly "hands-off" approach. While there are many areas where Bosnians can and should gradually take on more responsibility, the abrupt shift has left many Bosnian officials dazed and confused. His staff has also had difficulty re-orienting itself. In the two key decisions which have defined his tenure to date, CSS's strong disinclination to intervene (and Eurocentric orientation) have caused significant problems -- and kicked bigger ones down the road.

TWO DECISIONS DEFINE HIS TENURE

13. (U) The High Rep's first major decision was whether or not to extend the mandate of Indirect Taxation Authority (ITA) Governing Board (GB) Chairman Joly Dixon (reftel). Dixon's mandate originally expired in January 2006. Former High Rep Ashdown, keenly aware of the increasing criticism of Dixon's performance, did not want to saddle his successor with a long-term problem. But nor did he want CSS to face a crisis immediately upon arrival. As one of his last acts, Ashdown opted to extend Dixon's mandate until the end of March. As the new deadline drew near, the new team at OHR

was paralyzed between its desire for "local ownership" of decisionmaking and the European Commission's insistence that Dixon be reappointed. Repeated attempts to get the Bosnians to voluntarily accept Dixon failed. The Council of Ministers, which has the authority to appoint the GB Chairman, refused to extend Dixon or even ask the High Rep to take action. The state-level Finance Minister declined to request Dixon's reappointment. The RS government explicitly demanded Dixon's removal. Despite this, the High Rep bowed to EC pressure and extended Dixon for another three months, with an "option" for an additional four. The result: gridlock as both the RS and the state-level government refuse to work with Dixon and neither entity has received any revenues from the single account in April.

14. (U) In areas where EC equities are not on the line, the High Rep's insistence on non-intervention has been taken to extremes. Not by coincidence, the non-intervention came in a case where an important U.S. program to rationalize one of Bosnia's many governmental bottlenecks was at stake. That challenge was legal issues arising from amendments to the Federation Constitution imposed by OHR in 2002. The amendments are confusing, contradictory and dangerous in that one possible interpretation would give each ethnic group in the Federation a veto over all legislation. The issue came to light when the Croat-led HDZ party filed a Vital National Interest (VNI) challenge (the first since the 2002 imposition) to a U.S.-backed law creating a system for the non-political, transparent and stable distribution of revenues. Unable to understand the imposed amendments, the Federation Constitutional Court asked for guidance from Federation Parliament's Constitutional Committee. But since the amendments were imposed by OHR, the Committee could provide little help. Both turned to OHR with explicit

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requests for an interpretation of the OHR-imposed amendments. However, the High Rep maintained that providing an interpretation would be "undue interference" in an ongoing case. Strong requests from the USG failed to sway the new High Rep. In the end, the Court ruled against VNI but left the procedural issues unaddressed.

15. (U) CSS is likely to regret this approach when faced (soon) with the next crisis: the Federation-level law on public broadcasting services (PBS), an EC requirement for a Stabilization and Association Agreement (SAA). Passed on the heels of the revenue allocation law, it is also the subject of a VNI challenge by the Croats. It is highly likely that this law will fail if the Court is forced to rule under the current procedures. OHR will likely again face the a choice between its desire for local ownership (even, paradoxically, of laws OHR had to impose) and an SAA requirement. OHR's failure to act risks not only significant delays in the SAA process, but the entire reform agenda.

MORE ACTIVE ON CONSTITUTIONAL REFORM

16. (C) Even under Ashdown, OHR held back from the U.S.-orchestrated constitutional reform negotiations. Once the package was completed, OHR offered assistance; we are now working cooperatively with OHR and the Europeans on lobbying. CSS has been particularly useful with the Croat community, and is unafraid to pull strings in Berlin. However, as the end-game approaches, CSS has once again argued that less is more -- saying we need to "convince" rather than "pressure." We will want to emphasize that, on this issue, we will need a full court press and OHR is a key player.

17. (C) CSS has assured skeptical Croat politicians that he will be personally involved in "phase two." We should underscore that U.S. support for "phase two" is conditioned on successful completion of "phase one." CSS will look for our thoughts on the process; we should indicate we are still exploring the options, which include utilizing lessons learned from the successful defense reform model. We should

assure CSS that we will work with OHR as planning progresses, but we strongly believe that a central place for the High Rep in this process would only bureaucratize a process requiring political muscle.

THE FUTURE OF OHR

18. (C) CSS's major goal is to transform OHR into an EU Special Representative office by next March. In his view, that means relinquishing the Bonn Powers which allow the High Rep to impose legislation and remove recalcitrant political officials. Many of our European PIC colleagues are concerned about implications for Balkan stability, especially with a Kosovo decision on the horizon. We should underscore that, on this issue, the U.S. is one of CSS's strongest supporters.

Effective planning for a phase out is essential, but we should not begin now to pull back from doing everything we can to, yes, "pressure" Bosnians to make the reforms that will bring them into the EU and NATO. At its last meeting, the Peace Implementation Council asked OHR to present a detailed transition plan at its June session. We should tell CSS frankly that we will give it careful scrutiny; our continued backing for early transition depends on it.

MCELHANEY